IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 11887 of 2007(M)

PETITIONER:

KOSHY THANKACHAN,
POOSARI BUNGLOW, KAYAMKULAM.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS:

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1. KAYAMKULAM MUNICIPALITY, REPRESENTED BY ITS SECRETARY, KAYAMKULAM.

2. THE MUNICIPAL COMMITTEE, REPRESENTED BY ITS CHAIRMAN, KAYAMKULAM.

3. THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM.

R1-R2 BY ADV.MR.K.HARILAL
R3 BY GOVT. PLEADER MR.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 11887/07)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF NOTICE DATED 22.9.1982.

EXT.P2: TRUE COPY OF THE COMMUNICATION DATED 23.11.2006 RECEIVED BY THE PETITIONER.

EXT.P3: TRUE COPY OF PETITION DATED 5.1.2007.

EXT.P4: TRUE COPY OF THE COMMUNICATION DATED 28.2.2007 RECEIVED BY THE PETITIONER.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.11887 of 2007

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Dated: 9th October, 2007

JUDGMENT

The grievance of the petitioner is that his application for building permit submitted to the Kayamkulam Municipality has been rejected on the reason that the plot on which the building is proposed to be constructed falls within the transport zone as per the Town Planning Scheme formulated for the Municipality. Ext.P2 is the order of rejection issued by the Secretary of the Municipality. Against Ext.P2, the petitioner submitted Ext.P3 before the Municipal Council which also has been rejected under Ext.P4. In Ext.P4 it is stated that exemption from zoning regulations will be necessary and the petitioner's application for zoning exemption has been forwarded to the Chief Town Planner.

2. A detailed counter affidavit has been submitted by the Secretary of the Municipality justifying Exts.P2 and P4. It is also contended that the petitioner has remedy by way of appeal to the Tribunal for Local Self Government Institutions.

3. I have heard the submissions of Mr.P.Sreekumar, learned counsel for the petitioner and those of Mr.K.Harilal, Standing Counsel for the Kayamkulam Municipality. Learned counsel would make

submissions on the basis of the pleadings raised by their respective parties.

4. I am fairly convinced that in this case there is no necessity for getting zoning exemption from the Government since the transport zone is not one of the zones envisaged by Chapter XVI of the Town Planning Scheme which only deals with zoning regulations. But considering the submission of the learned Standing Counsel that the Municipality intends to utilise the petitioner's plot also as part of the proposed transport facilities in the Municipality, it will be directed that if the Municipality is successful in facilitating promulgation of a notification under Section 4(1) of the Land Acquisition Act for the acquisition of any portion of the petitioner's property within one year from today, the petitioner will not be entitled for any compensation for the building to be put up by him on the strength of the permit which may be issued to him. The principles laid down by the Division Bench of this court in **Padmini v. State of Kerala** (1999 (3) KLT 465), in my opinion, do apply to this case.

5. The result is that the Writ Petition will stand disposed of issuing the following directions:

The Chief Town Planner and the Municipality are directed to

take fresh decision in the matter of approving the plan submitted by the petitioner for building permit on the basis that there is no necessity in this case for getting zoning exemption. The question of granting approval to the plan/issuance of permit will be considered by the Chief Town Planner and the Municipality without being influenced in any manner by the so-called zoning regulations in the detailed Town Planning Scheme. If the plan is otherwise in order, the same will be approved and inclusion of the petitioner's property in the transport zone will not be a ground for rejecting the permit application or for refusing grant of approval. It is further directed that if a notification under Section 4(1) of the Land Acquisition Act is promulgated within one year from today, the petitioner will not be entitled for any compensation for the building to be put up by him on the strength of the permit which may be issued to him. Along with a copy of the judgment the petitioner will file an affidavit before the Municipality stating clearly that he will not claim any compensation for the building, if a notification under Section 4(1) of the Land Acquisition Act is promulgated within one year from 9.10.2007.

srd **PIUS C.KURIAKOSE, JUDGE**